

United States - Transitional Safeguard Action on Combed Cotton Yarn from Pakistan

**Oral Statement of the United States at the
First Meeting of the Panel**

1. Good morning Mr. Chairman, members of the Panel, and the delegation from Pakistan. On behalf of the United States, I would like to thank the Panel for the opportunity to appear before you to present the arguments of the United States in defense of the U.S. transitional safeguard action on Category 301 imports of combed cotton yarn from Pakistan. We do not intend to offer a lengthy statement today; you have already carefully reviewed our written submission, and we will not repeat all of the arguments that we made there. Rather, we will make a few general comments and then focus on some specific points that we would like to raise with you. We will be pleased to receive any questions you may have at the conclusion of our statement, and we look forward to responding to them.

2. Swift and meaningful recourse to a transitional safeguard in cases of serious damage or actual threat of serious damage caused by a surge in imports was a fundamental part of the bargain struck by importing and exporting countries during the negotiations leading to the WTO *Agreement on Textiles and Clothing* (ATC). Article 6 of the ATC sets out the mechanism which affords WTO Members the ability to address such situations during the delicate ten-year transition from a regime of special quotas to GATT rules. The question before the Panel today is whether to interpret the provisions of the ATC in a manner consistent with, as the delegation from Pakistan recognizes, the carefully negotiated balance that Members struck in the ATC or

whether, as Pakistan urges, to rewrite this agreement to set a higher bar for the invocation of a transitional safeguard mechanism.

3. The serious damage and the actual threat of serious damage suffered by the U.S. combed cotton yarn for sale industry over the two year and eight month period covered by the investigation are precisely the circumstances that led ATC negotiators to include a transitional safeguard mechanism in Article 6. In the period prior to the U.S. decision to invoke the Article 6 safeguard, Category 301 imports from all sources surged by 91.3 percent, and Category 301 imports from Pakistan – which were priced 28.3 percent below the average U.S. price – jumped by 283.2 percent. All the relevant indicators of the industry's economic performance deteriorated substantially: production dropped, shipments declined, inventories increased, unfilled orders fell, market share contracted, profitability evaporated, investment stagnated, employment declined, and mills exited the industry.

4. Faced with these facts, the United States exercised its Article 6 rights and, as demonstrated in our First Written Submission, did so in full accordance with the letter and spirit of the ATC. The United States conducted a thorough investigation of the effect of the import surge on the domestic industry. The United States carefully reviewed the information it had collected over a two year and eight month period and determined that the domestic industry had experienced a severe downturn, particularly during January-August 1998 when the surge of imports was at its height. With this information, the United States concluded that a surge of

Category 301 imports had left the industry in a state of serious damage, which threatened to continue unabated. The United States also attributed the industry's condition to the surge in low-priced Category 301 imports from Pakistan based on a comparison of imports from other sources, market share, and price.

5. Pakistan is attempting to shift attention away from the actual text of the ATC by relying on the language and interpretations of non-transitional WTO agreements and portraying the ATC as no different from these agreements. Pakistan is also attempting to turn attention away from the evidence actually presented in the U.S. Market Statement by introducing speculation and evidence which is outside the scope of this proceeding. Its reason for doing so is clear: to attempt to undermine the inescapable conclusion that the U.S. transitional safeguard on Category 301 imports from Pakistan fully accords with the requirements of the ATC.

6. Essentially, Pakistan wants this Panel to abandon its function of conducting an objective assessment of the facts and to assume the role of a competent national authority or the Textiles Monitoring Body (TMB), reopen the safeguard investigation based on new facts, reinvestigate the market situation, and determine for itself whether the dramatic surge in imports from Pakistan caused serious damage or actual threat of serious damage to the domestic U.S. industry. However, as Pakistan recognizes today, it is well established that the proper role of the Panel is far different. Pakistan itself concedes that panels are not to engage in a *de novo* review but rather are to make an objective assessment of the facts surrounding the application of the specific

restraint. The Panel in the *United States - Wool Shirts* decision clearly stated that DSU panels do not reinvestigate the market situation or consider developments subsequent to the initial determination but rather limit themselves to the evidence used by the importing Member in making its determination to impose the measure – which in this case is the U.S. Market Statement.

7. The United States strongly urges the Panel to reject Pakistan's invitation for it to act as a *de novo* fact-finder and instead to examine the text and the requirements of the ATC and determine, based on an objective assessment of the facts of this case, whether the transitional safeguard established on combed cotton yarn imports from Pakistan conforms with U.S. obligations under the ATC.

8. I would now like briefly to address four specific aspects of the U.S. decision to establish an Article 6 transitional safeguard on Category 301 imports that Pakistan has attempted to discredit. First, Pakistan's attack on the U.S. identification of the relevant domestic industry has no support in the ATC. Pakistan today claims that the U.S. is imputing words into the ATC. Pakistan is wrong. The United States based its entire industry definition on the words of Article 6.2. Rather than make a persuasive argument based on the text of the ATC and the relevant facts regarding the industry producing combed cotton yarn for sale, Pakistan presents unsupported assertions in an attempt to create confusion concerning the U.S. decision to exclude vertically

integrated producers of fabric and other non-yarn products from its definition of the “domestic industry.” This tactic of confusion does not withstand scrutiny.

9. As we explained in our First Written Submission, combed cotton yarn for sale establishments and vertically integrated producers of fabric and other non-yarn products are *not* part of the same industry; they “produce” different products. According to Oxford’s English Dictionary, “produce” means “bring a thing into existence, bring about, effect or cause an action or result.” In other words, the term “produce” turns on the good that the relevant enterprise actually makes, *not* the input used to make a subsequent product.

10. Combed cotton yarn producers *produce* combed cotton yarn for sale on the market in competition with Category 301 imports; they are thus part of the combed cotton yarn industry. Vertically integrated producers *produce* fabric, apparel, or home furnishings for sale; they are thus part of these respective industries and are *not* part of the combed cotton yarn for sale industry. Vertically integrated producers only manufacture combed cotton yarn as an *input* into the non-yarn product they subsequently produce. The combed cotton yarn manufactured by vertically integrated fabric and other non-yarn producers is not intended for release onto the market, does not compete with Category 301 imports, and is not the product these establishments subsequently produce. Pakistan’s claim in its First Written Submission and today that vertically integrated producers produce over 30 percent of the relevant combed cotton yarn is therefore highly misleading.

11. In addition, with respect to combed cotton yarn, only combed cotton yarn producers – not vertically integrated establishments – produce a like and directly competitive product to Category 301 imports. It is unclear why Pakistan stated today that it does not believe that the question of whether yarn is directly competitive is relevant, given the plain words of Article 6.2. Combed cotton yarn manufactured by vertically integrated producers of fabric, apparel, or home furnishings for their own consumption is not intended for sale on the market and is therefore not “like and directly competitive” with Category 301 imports. Pakistan wrongly believes that the mere manufacture of a similar article – even if it is not released onto the market and even if it does not directly compete with the import in question – somehow determines the scope of a domestic industry for purposes of the ATC. Pakistan is wrong. The plain language of Article 6.2 – “producing like and/or directly competitive products” – clearly permits an importing Member to define an industry on the basis of the particular product that is like *and* directly competitive – which is exactly what the United States did. Moreover, the purpose of Article 6 – to allow importers to seek a temporary relief from a surge in *imports* – contemplates safeguard action in cases where the products of domestic producers are like *and* directly competitive with imports.

12. My second point this morning revolves around the question of serious damage and actual threat of serious damage. Pakistan does not dispute that every relevant economic indicator set out in Article 6.3 pointed to an industry suffering serious damage and actual threat of serious damage caused by the surge in Category 301 imports. Nor does Pakistan dispute the data in the

Market Statement showing an alarming surge in Category 301 imports from Pakistan. The data in the U.S. Market Statement clearly demonstrated that imports from Pakistan were surging and that output was dropping, productivity was deteriorating, capacity utilization was falling, etc. It is no mere coincidence that the surge of low-priced Category 301 imports occurred while the industry was collapsing. As the United States demonstrated, it was these imports and not other factors that caused the serious damage and actual threat of serious damage to the domestic industry.

13. Since Pakistan cannot dispute the core facts in this case, it unsuccessfully tries to attack other aspects of the U.S. decision. Contrary to Pakistan's claims, the United States clearly established causation based on the upward trend in Category 301 imports and the negative trends in other economic variables and showed that other factors – such as consumer preferences or technological changes – were not a cause. Contrary to Pakistan's assertion, the United States provided specific, relevant factual information reflecting a period of two years and eight months that was as up-to-date as possible. Contrary to Pakistan's suggestion, the United States conducted a separate analysis of actual threat of serious damage. In sum, Pakistan has advanced no claim that in any way detracts from the clear showing by the United States – a showing entirely consistent with the ATC – that a surge in Category 301 imports caused serious damage and actual threat of serious damage to the domestic combed cotton yarn for sale industry.

14. I would now like to turn to our third point, which is Pakistan's claim, echoed by India in its Third Party Submission, that the United States somehow violated Article 6.4 of the ATC by failing to consider the increase in imports of combed cotton yarn from Mexico. Again, this claim has no basis in the ATC and is factually incorrect.

15. There is no support in the ATC – particularly in Article 6 – for Pakistan and India's apparent view that a transitional safeguard action on one Member is inappropriate if imports of the same product from another Member are increasing *at the same time*. Quite the contrary, the ATC specifically authorizes Member-by-Member safeguard action based on a sharp and substantial increase in imports from that Member individually and an analysis of imports from other sources generally as well as market share and price. As the ATC states, no one factor in the attribution analysis "either alone or combined with other factors, can necessarily give decisive guidance."

16. Moreover, Pakistan is plainly wrong to assert that the United States somehow ignored Mexico in its attribution of serious damage and actual threat of serious damage to Category 301 imports from Pakistan. The United States carefully considered increased imports from its Free Trade Agreement (FTA) partners – which include Mexico – as *a* factor in its assessment of all the factors set out in Article 6.4. However, even though imports from its FTA partners were also increasing, the totality of all factors – taken together – demonstrated that serious damage and actual threat of serious damage was attributable to low priced imports from Pakistan. The

magnitude of Pakistan's surge – 283.2 percent between January-August 1997 and January-August 1998 – was startling. Pakistan's prices, which were over 26 percent below average U.S. prices for all Category 301 imports and over 28 percent below average U.S. prices in areas where Category 301 imports from Pakistan were concentrated, stood out in comparison to average world prices. Pakistan's surge as a percent of production and as a percent of total imports – a four-fold increase and two-fold increase respectively – made attribution to Pakistan appropriate. An objective assessment of these facts in light of the text and purpose of the ATC – which, again, specifically authorizes *bilateral* safeguard action – supports the U.S. decision.

17. The fourth and final point I would like to make with you concerns Pakistan's claims that a transitional safeguard is somehow inappropriate if part of an industry is restructuring in response to a damaging surge in imports. This claim flatly contradicts the purpose of the ATC, which is to facilitate the ten year transition of the textile and apparel sector into the rules of the GATT. The United States fully recognizes that, during this transition, restructuring and retooling will occur. However, the fact that restructuring may occur in response to serious damage should no way minimize the existence of the serious damage that is leading the industry to restructure. Nor should it diminish the right of an importing Member to provide temporary relief to an industry suffering serious damage. Certain industries – such as, in this case, the domestic combed cotton yarn for sale industry – may need the cushion provided by Article 6 to make this transition in the least disruptive manner and avoid the detrimental effects of an additional surge.

Importing Members reserve the right to decide whether to invoke the transitional safeguard mechanism in such cases where all the requirements of Article 6 are met.

18. The case before the Panel today is one of *forced* restructuring which occurred as the direct result of serious damage to the industry caused by the deleterious surge in imports. The fact that some mills went on to restructure and retool in no way distracts from the serious damage facing the combed cotton yarn industry when the United States issued its Market Statement in December 1998. These mills and their employees – although they were lucky to find a new home in another industry – had no choice but to abandon the combed cotton yarn industry. Article 6 of the ATC was drafted for the purpose of accounting for the serious damage caused to industry by surges in imports during the restructuring and transitional process. Importing Members need not sit idly by, as Pakistan suggests, while damaging surges in imports undermine industry efforts to retool, restructure, and readjust.

19. Pakistan's assertions about restructuring are part of its effort to focus attention away from the facts and encourage the Panel to conduct a *de novo* review of the market situation. The Panel should not reward Pakistan by considering the new evidence it introduces or the claims on which this evidence is based. Rather, the Panel should focus its attention on conducting an objective assessment of the facts as they were available to the United States at the time it prepared its Market Statement. These facts indisputably reveal that the dramatic surge in low-priced Category 301 imports produced a domestic industry in peril – with declining production and

shipments, deteriorating financial performance, rising inventories and falling unfilled orders, dwindling market share, contracting exports, and stagnating investment.

20. Pakistan's assertions about restructuring are also part of its overall objective to encourage a reading of Article 6 that would render recourse to the Article 6 transitional safeguard mechanism next to impossible. Each of Pakistan's arguments appears to be crafted with this purpose in mind. For instance, Pakistan's claim that Article 6 compels only one reading of the phrase "domestic industry producing like and/or competitive products" would completely undermine the flexibility of importing Members to focus on those products which directly compete with imports and those industries which would most be affected by an import surge. Moreover, Pakistan's suggestion that an Article 6 safeguard is incompatible with restructuring would mean that serious damage could not exist if an industry participant is forced to seek to restructure in response to an import surge or if an employee in a failing mill is able to find a job in some other industry. Furthermore, Pakistan's claims that an importing Member cannot attribute serious damage to a sharp and substantial increase in low-priced imports from one country if imports in another country may also be rising would render meaningless the bilateral nature and intent of the Article 6 safeguard. Finally, Pakistan's assertions regarding the length of time required for a safeguard investigation imply that importing Members should postpone indefinitely taking safeguard action while imports continue their damaging surge.

21. If the Panel credits Pakistan's approach in this proceeding, then Members may well conclude – despite the plain meaning of the text – that Article 6 does not provide the redress it was intended to provide. This would be unfortunate given the central position Article 6 plays in the carefully negotiated balance of rights and obligations provided by the ATC between the interests of importing Members and exporting Members. We urge the Panel to reject Pakistan's efforts in this case. Instead, the Panel should give effect to the Article 6 transitional safeguard mechanism based on its plain meaning, its context, and the object and purpose it serves.

22. This concludes our presentation today and as we noted at the outset, we will be pleased to receive any questions you may have. Thank you.